

REMARKS

In the final Office Action, the Examiner rejects claims 1, 3-16, and 18-31 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2004/00002384 to Multerer et al. (hereinafter "MULTERER") in view of U.S. Patent Application Publication No. 2002/0013882 to Ko et al. (hereinafter "KO"), and further in view of U.S. Patent No. 6,981,251 to Kreller et al. (hereinafter "KRELLER").

Applicants respectfully traverse this rejection.¹ Claims 1, 3-16, and 18-31 are pending.

Claims 1, 3-16 and 18-31 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2004/00002384 to MULTERER in view of KO, and further in view of KRELLER. Applicants respectfully traverse this rejection.

Independent claim 1 is directed to a method for establishing a gaming session between a first network device that includes an operating system and at least one second network device in a communications network, that includes modifying the first network device for the gaming session, the modifying including loading a new operating system, booting the first network device up in the new operating system, detecting a hardware configuration of the first network device, generating a configuration file based on the detecting, compiling network access software and peering software using the configuration file, and installing the network access software and the peering software

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, reasons for modifying a reference and/or combining references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

using the configuration file, connecting the first network device to the communications network; and establishing a peer-to-peer gaming session with the at least one second network device. MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, do not disclose or suggest this combination of features.

For example, MULTERER, KO, and KRELLER do not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. The Examiner admits that MULTERER does not disclose this feature (final Office Action, p. 3). The Examiner relies on paragraphs [0036-0038], [0040], and [0044] of KO for allegedly disclosing installing network access software using a configuration file (final Office Action, p. 3). Applicants disagree with the Examiner's interpretation of KO.

Paragraphs [0036-0038] of KO disclose, after turning on a computer, checking the system configuration, checking installation states and problems of various peripheral devices connected to the computer and generating a hardware list containing these devices. If there is a problem during this process, an error is indicated to the user. Next, a boot program loading operation is executed. The boot program is stored inside a boot program storage device and is loaded into the RAM. The boot program contains a priority table, an optical disc player driver, and a loader program. The user selects an operating system, and if only one operating system is available, that operation system is automatically selected.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, which is generated based on

detecting a hardware configuration of the first network device, as recited in claim 1.

Rather, this section of KO only discloses loading a boot program and letting a user select an operating system.

Paragraph [0040] of KO discloses that after an operating system is loaded, a necessary user configuration is set up using user configuration setting information recorded in the data region disc. After obtaining configuration variables, such as application programs used by the user and data files generated by the application programs, necessary application programs are executed. The user can obtain the same operating system and user configuration as that of a computer, and the user configuration, which contains information on the application programs used by the user and the data used by the application programs, may be updated in response to the changes.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Rather, this section of KO only discloses setting user configurations for application programs.

Paragraph [0044] of KO discloses the case of applying the optical disc of KO to a game system. The linker loads an appropriate operating system and game programs to the game engine so that various game systems can operate with only one optical disc.

This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Rather, this section of KO only discloses using the same optical disc having an operation system to multiple game systems.

The Examiner also alleges that KO discloses installing drivers for each device on the user's computer, and that since MULTERER discloses a network access device, one of ordinary skill would naturally understand that a network driver would be installed as well (final Office Action, p. 3). The Examiner appears to be referring to paragraph [0039] of KO, which discloses that if a user selects an operating system recorded on an optical disc, the operating system is read from the optical disc and loaded into the RAM. The hardware list generated previously is used to install a driver file for each device on the list. This section of KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. Even if it is assumed that the hardware list contains a network access device, a point Applicants do not concede, installing a network driver for a network access device is not equivalent to installing network access software. For example, a device driver is generally hardware specific, while network access software operates as an application.

Furthermore, none of the sections of KO relied on by the Examiner, or any other sections of KO, disclose or even remotely suggest peering software. Therefore, KO does not disclose or suggest installing network access software and peering software using a configuration file, as recited in claim 1. In fact, the Examiner admits that MULTERER and KO do not disclose or suggest installing peering software using a configuration file (final Office Action, p. 3).

The Examiner alleges that KRELLER discloses "another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device" (final Office

Action, p. 3). Applicants submit that this allegation does not address the feature of installing peering software. KRELLER does not disclose or even remotely suggest peering software. In fact, the words “peer” or “peering” do not appear anywhere in KRELLER.

Moreover, MULTERER, KO, and KRELLER do not disclose or suggest compiling network access software and peering software using a configuration file, as also recited in claim 1. The Examiner admits that MULTERER and KO do not disclose or suggest compiling network access software and peering software using a configuration file, and, as stated above, relies on col. 3, lines 20-31 of KRELLER for allegedly disclosing “another software installation system in which, in response to receiving a hardware list of components installed, an executable application is compiled and installed on the client device” (final Office Action, p. 3). Applicants submit that this section of KRELLER does not disclose or suggest the above feature of claim 1.

Col. 3, lines 20-31 of KRELLER disclose:

The agent system is distinguished in that the agent system launcher is designed such that, before an agent system is loaded from a host computer onto the client computer on which at least the agent system launcher is installed, an identifier describing the hardware and/or software of the client computer is sent to the host computer, and a server system, the agent system update program, installed on the host computer is designed such that it takes the identifier describing the hardware and/or the software of the client computer as a basis for compiling an agent system adjusted to the hardware and/or software of the client computer and loads this agent system onto the client computer.

This section of KRELLER discloses an agent system that is installed on a host computer by using the hardware and/or software of the client computer, on which the agent system is to be installed, as a basis for compiling the agent system and loading the agent system onto the client computer. The agent system, or mobile agent, is an autonomous cooperative software unit, which requires no interaction with the user, and is

fundamentally different from a conventional program (see KRELLER, col. 1, lines 23-26 and lines 38-42). This section of KRELLER does not disclose or suggest compiling network access software and peering software using a configuration file, as recited in claim 1. Instead, KRELLER discloses compiling mobile agents, which are unrelated to network access software or to peering software.

Therefore, even if KO and KRELLER were to be combined with MULTERER, the combination would not disclose or suggest the above feature of claim 1. Further, even if for the sake of argument, the combination of MULTERER, KO, and KRELLER could be fairly construed to disclose or suggest each of the features of claim 1, Applicants assert that the reasons for combining MULTERER, KO, and KRELLER do not satisfy the requirements of 35 U.S.C. § 103.

For example, with respect to the reasons for combining MULTERER and KO, the Examiner alleges (final Office Action, p. 3):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Ko with Multerer thereby utilizing the optical disk of Ko to load an operating system, such as the one of Multerer 526 and then install game software (Ko; paragraph 44), which can be the gaming software described in Multerer (e.g. abstract), thereby allowing those users of Multerer in order to utilize the gaming software regardless of the type of operating system software or the type of hardware in the device supported by Ko (paragraphs 11-12).

Applicants submit that the Examiner's allegation is merely a conclusory statement about an alleged benefit of the combination. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Applicants rely upon KSR International Co. v. Teleflex Inc., 550 U.S. ____ (April 30, 2007) (citing In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements;

instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

With respect to the reasons for combining MULTERER and KO with KRELLER, the Examiner alleges (final Office Action, p. 4):

It would have been obvious to one of ordinary skill in the art to combine the teaching of Keller with Multerer-Ko, in order to compile and install the peering software of Multerer utilizing the hardware list of Ko, after the operating system of Ko has been installed, thereby avoiding incompatibilities of software applications and installed hardware.

Applicants submit that the Examiner's allegation is again merely a conclusory statement about an alleged benefit of the combination. Furthermore, if KO is to be combined with MULTERER to avoid operating system and hardware incompatibilities as the Examiner alleges above, it is unclear what the addition of KRELLER is supposed to accomplish. In addition, KRELLER is directed to installing mobile agents, which is unrelated to peer-to-peer applications. As stated above, KRELLER does not even mention peering. The Examiner has not provided a clear explanation of how KRELLER can be combined with an alleged MULTERER and KO combination, or given sufficient reasons for undertaking such a combination. Therefore, a *prima facie* case of obviousness with respect to claim 1 has not been established.

For at least the foregoing reasons, Applicants submit that claim 1 is patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination. Accordingly, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Claims 3-11 depend from claim 1. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 3-11 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Moreover, these claims are patentable over MULTERER, KO, and KRELLER for reasons of their own.

Claim 7 recites connecting to a communications network using Virtual Private Network (VPN) security. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, pp. 5-6). Applicants respectfully disagree with the Examiner's allegation and submit that connecting a first network device, which is modified for a gaming session in the manner recited in claim 1, to a communications network using Virtual Private Network (VPN) security was not well known at the time of the invention. If this rejection is maintained, Applicants respectfully request that the Examiner provide a reference disclosing this feature. The Examiner alleges that Applicants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Applicants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Applicants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of

the Amendment, dated April 17, 2008, Applicants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

For at least this additional reason, Applicants submit that claim 7 is patentable over MULTERER, KO, and KRELLER.

Independent claims 12, 24, and 31 recite features similar to, yet possibly of different scope than, features recited above with respect to claim 1. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least reasons similar to the reasons set forth above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claims 12, 24, and 31 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Claims 13-16 and 18-23 depend from claim 12. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 12. Accordingly, Applicants respectfully request that the rejection of claims 13-16 and 18-23 under 35 U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Moreover, these claims are patentable over MULTERER, KO, and KRELLER for reasons of their own.

For example, claim 16 recites downloading a gaming package, which includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software, from the network. The Examiner alleges

that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 8). Applicants respectfully disagree with the Examiner's allegation and submit that downloading a gaming package, which includes an operating system, a script for detecting a hardware configuration of the device, software for accessing a network, and peering software, from the network was not well known at the time of the invention. If this rejection is maintained, Applicants respectfully request that the Examiner provide a reference disclosing this feature. The Examiner alleges that Applicants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Applicants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Applicants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Applicants' silence as to the Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

For at least this additional reason, Applicants submit that claim 16 is patentable over MULTERER, KO, and KRELLER.

Claims 25-30 depend from claim 24. Therefore, these claims are patentable over MULTERER, KO, and KRELLER, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 24. Accordingly, Applicants respectfully request that the rejection of claims 25-30 under 35

U.S.C. § 103(a) based on MULTERER, KO, and KRELLER be reconsidered and withdrawn.

Moreover, these claims are patentable over MULTERER, KO, and KRELLER for reasons of their own.

For example, claim 27 recites a device to provide at least one advertisement to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 9). Applicants respectfully disagree with the Examiner's allegation and submit that a device to provide at least one advertisement to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices, was not well known at the time of the invention. If this rejection is maintained, Applicants respectfully request that the Examiner provide a reference disclosing this feature. The Examiner alleges that Applicants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Applicants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Applicants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Applicants' silence as to the

Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

For at least this additional reason, Applicants submit that claim 27 is patentable over MULTERER, KO, and KRELLER.

Claim 28 recites a device to provide at least one fee-based service to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices. The Examiner alleges that this feature is well known in the art and relies on OFFICIAL NOTICE (final Office Action, p. 9). Applicants respectfully disagree with the Examiner's allegation and submit that a device to provide at least one fee-based service to a first network device of the plurality of network devices based on stored information, which includes information identifying selected games and information identifying the users associated with a plurality of network devices, was not well known at the time of the invention. If this rejection is maintained, Applicants respectfully request that the Examiner provide a reference disclosing this feature. The Examiner alleges that Applicants have failed to seasonably challenge the Examiner's assertions of well known subject matter and thus allegedly the claim features the Examiner considers well known are now established as admitted prior art (final Office Action, p. 11). Applicants respectfully traverse the Examiner's assertion. M.P.E.P. § 2144.03 does not specify a time limit within which Applicants must seasonably challenge the Examiner's OFFICIAL NOTICE. Furthermore, as stated in the footnote on p. 12 of the Amendment, dated April 17, 2008, Applicants' silence as to the

Examiner's assertion as to dependent claims is not a concession that such assertions are accurate.

For at least this additional reason, Applicants submit that claim 28 is patentable over MULTERER, KO, and KRELLER.

In response to Applicants' challenge regarding the Examiner's use of OFFICIAL NOTICE with respect to claim 6, the Examiner relies on U.S. Patent No. 7,159,008 to Wies et al. (hereinafter "WIES") (final Office Action, dated July 30, 2008, p. 10). Therefore, claim 6 will be addressed as also rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over MULTERER, KO, KRELLER, and WIES.

Claim 6 depends from claim 1. Without acquiescing in the Examiner's rejection, Applicants submit that WIES does not overcome the deficiencies of MULTERER, KO, and KRELLER set forth above with respect to claim 1. Therefore, claim 6 is patentable over MULTERER, KO, KRELLER, and WIES, whether taken alone or in any reasonable combination, for at least the reasons set forth above with respect to claim 1. Accordingly, Applicants respectfully request that the rejection of claim 6 under 35 U.S.C. § 103(a) based on MULTERER, KO, KRELLER, and WIES be reconsidered and withdrawn.

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims. While the present application is believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise that could be eliminated through discussions with Applicants' representative, then the Examiner is

invited to contact the undersigned by telephone to expedite prosecution of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

HARRITY SNYDER, L.L.P.

By: /Viktor Simkovic, Reg. No. 56,012/
Viktor Simkovic
Registration No. 56,012

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11350 Random Hills Road
Suite 600
Fairfax, Virginia 22030
(571) 432-0800 main
(571) 432-0899 direct

Customer Number: 25537